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State of New Hampshire
Office of Attorney General

Honorable Lane Dwinell

in opinion
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December 14, 1955

see note attached

1955 Appropriations. No state, nor any person having control of public funds appropriated by the general court shall use any part of such funds for any other purpose than that for which they were appropriated, or expend any money or make any contract in any way binding the state in excess of the amount voted by the legislature.

December 14, 1955

Honorable Lane Dwinell, Governor
State of New Hampshire
Concord, New Hampshire

Dear Governor Dwinell:

Some few days ago Mr. Pope discussed with me the fact that the sum appropriated in Laws 1955, chapter 286, for the payment of the Korean bonus may soon be expended; and that it thus appeared that a number of claims for the bonus could not be paid due to lack of funds. He asked the views of this office on the question whether the expected deficiency might be made up by drafts upon the Treasury from "funds not otherwise appropriated," the Legislature being later asked to ratify such acts through the means of deficiency appropriations. It is our view that the adoption of such a course would entail the doing of acts specifically prohibited by law.

In a consideration of this matter reference must first be had to the Constitution which, in Part Second, Article 56, provides that

"No moneys shall be issued out of the treasury of this state . . . but by warrant under the hand of the governor for the time being, by and with the advice and consent of the council, for the necessary support and defense of this state, and for the necessary protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court." (Emphasis added).

This provision is self-effectuating, it would seem, and of itself would appear to prohibit the expenditure of funds in any case in excess of the amount appropriated. Funds paid out in excess of the sums prescribed by the Legislature cannot be said to be disbursed "agreeably to the acts and resolves of the general court." However in 1903 the Legislature removed all possible doubt in this regard in the enactment of what is now RSA 9:19 and RSA 9:20:

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December 14, 1955

MEMO
"9:19 Exceeding Appropriations. No state official, commissioner, trustee, or other person having control of public funds appropriated by the general court shall use any part of such funds for any other purpose than that for which they were appropriated, or expend any money or make any contract or bargain, or in any way bind the state in excess of the amount voted by the legislature."

"9:20 --Personal Liability. Any person who violates the provisions of the preceding section individually or as a member of a board shall be personally liable for the amount of the excess expended, contracted, or bargained above the appropriation."

An examination of the chapter first cited shows that the sum of \$1,000,000.00 was appropriated for the purpose of paying the bonus. Events have proved that the intention on the part of the Legislature to appropriate funds was not coextensive with its intention to benefit eligible veterans. This was undoubtedly due to a miscalculation with respect to the number of veterans who would prove eligible. But such miscalculation does not confer appropriating power upon the executive branch of the government. Nor does it operate to remove the prohibition of the statutes quoted above.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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